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Attorneys for Plaintiff Center for Biological Diversity

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

CENTER FOR BIOLOGICAL  
 DIVERSITY, a non-profit organization,  
 Plaintiff,  
 v.  
 THE OFFICE OF MANAGEMENT AND  
 BUDGET,  
 Defendant.

No. C 07-4997 MHP

**STIPULATION AND ~~PROPOSED~~  
 ORDER APPROVING SETTLEMENT  
 AND DISMISSAL OF PLAINTIFF'S  
 CLAIMS**

1 Plaintiff Center for Biological Diversity (“the Center”) and Defendant Office of  
2 Management and Budget (“OMB”), through their undersigned counsel, enter into this Settlement  
3 in order to fully resolve this litigation and the Center’s claim for attorneys’ fees, expenses and  
4 costs generated in connection with this litigation.

5 The parties agree as follows:

6 1. Defendant will pay to the Center, by means of an electronic payment to a bank  
7 account to be designated by the Center, the amount of \$175,000.00 to cover attorneys’ fees,  
8 expenses and costs of all counsel pursuant to the Freedom of Information Act, 5 U.S.C. §  
9 552(a)(4)(E). This payment is full and final payment for all attorneys’ fees, expenses and costs.  
10 This payment is inclusive of any interest. If any withholding or income tax liability is imposed  
11 upon Plaintiff or Plaintiff’s counsel based on payment of the settlement sum as set forth herein,  
12 Plaintiff and its counsel shall be solely responsible for paying any such liability.

13 2. Defendant shall make payment to the Center no later than thirty days after the  
14 date that the Court approves this Stipulation. Defendant further agrees to make all reasonable  
15 efforts to process and cause payment to be made to the Center as soon as possible.

16 3. Contingent upon receipt of payment pursuant to Paragraph 1 above, Plaintiff  
17 hereby (a) releases Defendant from any past, present or future claims for attorneys’ fees,  
18 expenses or costs in connection with this litigation and (b) dismisses with prejudice this  
19 litigation and all claims against Defendant relating to the FOIA request at issue in this litigation.

20 4. The Court shall retain jurisdiction regarding enforcement of Defendant’s  
21 agreement to make the payment pursuant to Paragraph 1 above.

22 5. This Stipulation is binding upon and inures to the benefit of the parties hereto and  
23 their respective successors and assigns.

24 6. No party is making an admission of liability or fault to any other party and  
25 nothing in this Stipulation shall be construed as an admission of liability or fault.

26 7. This Stipulation may be pled as a full and complete defense to any action or other  
27 proceeding in which any party seeks attorneys’ fees, expenses or costs generated in this  
28 litigation.

1           8.       Plaintiff and its current counsel expressly agree that neither it nor any of its  
2 current or former attorneys may make any claim for attorneys' fees, expenses or costs generated  
3 in this litigation against Defendant, the United States, their agents, servants or employees.  
4

5                               Respectfully submitted,

6           DATED: February 4, 2010

7                               By:       /s/  
8                               VERA PARDEE  
9                               Attorneys for Plaintiff

10                              JOSEPH P. RUSSONIELLO  
11                              United States Attorney

12           DATED: February 4, 2010

13                              By:       /s/  
14                              MICHAEL T. PYLE  
15                              Assistant United States Attorney  
16                              Attorneys for Defendant

17           PURSUANT TO STIPULATION, IT IS SO ORDERED:

18           DATED: February 8, 2010

